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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/596,851	06/19/2000	Gary M. Diamond	99-109	4220

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SYMYX TECHNOLOGIES INC  
LEGAL DEPARTMENT  
3100 CENTRAL EXPRESS  
SANTA CLARA, CA 95051

EXAMINER
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BAKER, MAURIE GARCIA

ART UNIT	PAPER NUMBER
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1639

DATE MAILED: 07/14/2003

24

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/596,851

Applicant(s)

Diamond et al

Examiner

Maurie G. Baker, Ph.D.

Art Unit

1639



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Apr 30, 2003
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 16, 17, 19-38, and 40-58 is/are pending in the application.
- 4a) Of the above, claim(s) 20-23, 27, 29, 34-36, 40, 44, 46-49, and 51-58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 16, 17, 19, 24-26, 28, 30-33, 37, 38, 41-43, 45, and 50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.
2. The Response filed April 30, 2003 (Paper No. 21) is acknowledged. No claims were amended, added or cancelled. Currently, claims 16, 17, 19-38 and 40-58 are pending.
3. Claims 20-23, 27, 29, 34-36, 40, 44, 46-49 and 51-58 remain withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to non-elected species, there being no allowable generic claim. With respect to applicant's arguments that these claims should be examined (Response, page 2), the examiner's withdrawal of the above claims from consideration is deemed to be proper in view of the fact that there is *no allowable generic claim*. However, as stated in the Restriction Requirement, upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141.

4. Therefore, claims 16, 17, 19, 24-26, 28, 30-33, 37, 38, 41-43, 45 and 50 are examined on the merits in this action.

***Status of Rejections***

5. All previous rejections are maintained. Response to applicant's arguments follow each rejection. Also a new rejection is set forth in this action (see paragraphs 30-31).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 16, 17, 19, 24-26, 28, 30-33, 37, 38, 41-43, 45 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Tol et al (WO 97/42232 - on PTO-1449) in view of Willson (WO 97/32208 - on PTO-1449).

Van Tol et al teach a method for polymerization of alpha olefins using various catalysts (see Abstract). The method is first carried out with the monomer of octene (reading on the limitations of the instant 37, 38 and 41), see page 28, beginning on line 9. The method is then carried out with octene and other monomers, see Example II beginning on page 28, line 26. Octene and ethylene are polymerized in Example III of the reference (page 31). Since Van Tol et al starts off by only using octene and then goes on to use other monomers in their polymerization process, this is deemed to read on the limitation where the "polymerization performance of the potential catalysts is determined for at least a first monomer as a predictor for the polymerization performance of the potential catalysts for at least a second monomer" of claim 16 and also the limitations of claim 17. Note that Van Tol et al characterize the octane polymer by determining molecular weight and unsaturation (NMR) {Example I} and others by amount of polymer produced {Example II}. The other polymers made by incorporation of other monomers were also characterized. This reads on the limitations in instant claims 19, 30, 45 and 50.

The reactions were quenched to stop the polymerization after a two hour period (page 28, lines 16-18), reading on the limitations of claim 31 and 32. Van Tol et al teach a variety of catalyst systems, see page 33, Table 1 of the reference.

Van Tol et al lack the specifics of testing an “array of at least 8 potential polymerization catalysts” by “concurrent reaction” (claim 16) and the limitations of claims 24-26, 28, 33, 42 and 43 concerning testing arrays, array format, number of elements in the array and time per assay. However, the findings of *In re Aller* should be considered: “where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

Moreover, various formats for preparing and testing collections of catalysts were well known in the art at the time of filing. Willson teaches a multicell holder for assembling and testing large numbers of catalysts as cells, spots or pellets (see Abstract; Figure 1 and page 2, lines 14-29). In preparing Willson’s arrays of catalysts, “the catalyst candidate precursors can be deposited...by any convenient technique, preferably by pipette or absorbing stamp...In preferred embodiments, the deposition process will be under robotic control, similar to that used to load multicell plates in biochemical assays” (page 4, top). Willson also teaches that robotic techniques can be employed. The reference teaches that their set-up permits “the scanning of dozens of catalysts in a single set-up, often in less time than required for a single catalysts to be evaluated by conventional methods” (page 2, lines 1-11). Willson also teaches that “[o]nce the catalysts are in place on the support, any suitable technique known to the art can be used to stabilize, and/or activate the particular catalysts

chosen” (page 4, bottom). The reference teaches that the invention “has utility with any reaction which can be enhanced by the presence of a catalyst ... including ...polymerization reactions...” (page 5, lines 5-11).

Therefore, it would have been *prima facie* obvious to one of ordinary skill in the art to use the catalysts and methodology of Van Tol et al in a combinatorial type setting (assay) to make and test arrays of catalysts as taught by Willson for polymerization performance based on the results of initial monomer testing (as set forth by Van Tol et al). Willson demonstrates that physical and spatial manipulation of catalyst arrays was well known in the art at the time of filing. The techniques for these manipulations result in a more automated work environment. One of ordinary skill would be motivated to use various automated manipulation techniques known to the combinatorial chemistry art (as evidenced by the teachings of Willson) based on their known advantages. The advantages are specifically taught, for example, in Willson, that is “sharply reduce labor costs per catalyst screened”.

### ***Response to Arguments***

9. Applicant’s arguments filed April 30, 2003 have been fully considered but are not found persuasive. The examiner’s rationale is set forth below. Also, the Declarations under 37 CFR 1.132 filed April 30, 2003 are insufficient to overcome the rejections of the claims. This is specifically discussed in paragraphs 19-24 below.

10. Applicant argues that the Van Tol reference “does not disclose any figure of merit, prediction or screening of catalysts” (Response, page 3). The examiner respectfully disagrees. As stated in the rejection, since Van Tol et al starts off by only using octene and then goes on to use other monomers in their polymerization process, this is deemed to read on the limitation where the “polymerization performance of the potential catalysts is determined for at least a first monomer as a predictor for the polymerization performance of the potential catalysts for at least a second monomer”.

11. There are no additional limitations set forth in the instant claims as to what constitutes the step of “polymerization performance of the potential catalysts is determined for at least a first monomer as a predictor for the polymerization performance of the potential catalysts for at least a second monomer”. That is, there are no specific values or algorithms that are to be used in making this prediction set forth in the instant claims. Applicant states that this argument is confusing (Response, page 4). As stated in the last action, steps such as “prediction” and “planning” are mental steps as currently claimed and the prior art process could be used for this purpose (i.e. prior art capable of performing the intended use). See paragraph 14 below. Importantly, Applicant’s specification states that “the step of using the determination as a predictor comprises copolymerizing the first and second monomer using the catalysts” (page 11, lines 24-25). The above-mentioned teachings of Van Tol clearly read on this.



12. Also, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e. overcoming a benchmark of performance; comparative numerical property; "setting a benchmark for the figure of merit high enough so that a prediction can be made" see, e.g. Response, page 4) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Moreover, it is not at all clear that such limitations are even present in the instant specification.

13. On the whole, applicant's arguments are directed to the step of using the determination as a predictor (and for planning) and that such is not taught by the prior art. However, some of these "steps" are set forth in the preamble of the method. Note that the preamble is not given the effect of a limitation unless it breathes life and meaning into the claim. In order to limit the claim, the preamble must be "essential to point out the invention defined by the claim." *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951) (discussed below). A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) {see MPEP § 2111.02}. The references that are set forth in the rejection above clearly teach the steps of the claimed method, thus the

method is deemed to be *prima facie* obvious. Applicant argues that the preamble is “more than a mere statement of purpose” (Response, page 5). The examiner has not completely disregarded the preamble, and has given some of it patentable weight as evidenced by the rejection. However, some of the “steps” set forth in the preamble have not been given patentable weight (i.e. using performance as a predictor), see paragraph 11 above.

14. Also, certain claim limitations appear to be directed at the intended use of the claimed method. In apparatus, article, and composition claims, intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); *In re Otto*, 312 F.2d 937, 938, 136 USPQ 458, 459 (CCPA 1963).

15. Applicants argue that steps such as “prediction” and “planning” differentiate their process from the prior art; however, these are mental steps as currently claimed and the prior art process could be used for this purpose (i.e. prior art capable of performing the intended use). Importantly, the limitation of “using the polymerization performance as a figure of merit for planning” is a mental act that is not given any patentable weight. There is no ascertainable manipulative difference that results from this step.

Applicants argue that there is “tremendous manipulative difference” (Response, page 6). However, it is the examiner’s position that such a difference is not evident from the language of the claims. Applicants also “submit that the prediction and planning steps are indirectly reciting an algorithm” (Response, page 6). Indirectly reciting an algorithm is not sufficient to lend the claim limitations patentable weight. Applicant then goes on to further describe the prediction and planning steps; however, most of the steps/acts referred to are not positively recited in the instant claims (see also paragraph 12 above).

16. Thus, the examiner’s position is that the teachings of Van Tol et al and Willson render the method of the instant claims *prima facie* obvious in view of the fact that Van Tol et al starts off by only using octene and then goes on to use other monomers in their polymerization process and the teaching of Willson that various formats for preparing and testing collections of catalysts were well known in the art at the time of filing. As stated in the rejection, Van Tol et al teach initial monomer testing and Willson demonstrates that physical and spatial manipulation of catalyst arrays was well known in the art at the time of filing.

17. Applicants state that there is no motivation to combine the two references. The examiner respectfully disagrees. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references

would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). As stated in the rejection, it would have been obvious to one of ordinary skill in the art to use the catalysts and methodology of Van Tol et al in a combinatorial type setting (assay) to make and test arrays of catalysts as taught by Willson for polymerization performance based on the results of initial monomer testing (as set forth by Van Tol et al). Willson demonstrates that physical and spatial manipulation of catalyst arrays was well known in the art at the time of filing. The techniques for these manipulations result in a more automated work environment. One of ordinary skill would be motivated to use various automated manipulation techniques known to the combinatorial chemistry art (as evidenced by the teachings of Willson) based on their known advantages. The advantages are specifically taught, for example, in Willson, that is "sharply reduce labor costs per catalyst screened".

18. In this case, the examiner maintains that the *combined* teachings of the cited references render the claimed invention obvious. The teachings referred to above (paragraph 17) are strong motivation. The strongest rationale for combining references is a recognition, expressly or impliedly in the prior art or drawn from a convincing line of reasoning based on established scientific principles or legal precedent, that some advantage or expected beneficial result would have been produced by their combination. *In re Sernaker*, 702 F.2d 989, 994-95, 217 USPQ 1, 5-6 (Fed. Cir. 1983).

19. With respect to the Declaration of Richard F. Jordan, this Declaration is insufficient to overcome the rejections. This is because the Declaration merely states conclusions (opinions) and lacks factual support for the expert's opinion. "Although an affidavit or declaration which states only conclusions may have some probative value, such an affidavit or declaration may have little weight when considered in light of all the evidence of record in the application." *In re Brandstadter*, 484 F.2d 1395, 179 USPQ 286 (CCPA 1973).

20. Also, the Declaration refers to steps or elements which are not present in the instant claims. For example, paragraph 6 of the Declaration refers to using a monomer which is "easy to handle" to predict performance for monomers "more difficult to handle". Also, paragraph 9 of the Declaration refers to "particular property being measured for threshold performance" and that such is "typically set sufficiently high". Thus it is not commensurate in scope with the claimed invention. See also paragraph 29 below.

21. With respect to the Declaration of Vincent J. Murphy and the commercial success of the invention, the examiner would like to set forth several points. First, the proffered evidence is *not* commensurate in scope with the claimed invention (see MPEP § 716.03(a)). In order to be commensurate in scope with the claims, the commercial success must be due to claimed features, and not due to unclaimed features. *Joy Technologies Inc. v. Manbeck*, 751 F. Supp. 225, 229, 17 USPQ2d 1257, 1260 (D.D.C.

1990), *aff'd*, 959 F.2d 226, 228, 22 USPQ2d 1153, 1156 (Fed. Cir. 1992). Second, see MPEP § 716.03: An applicant who is asserting commercial success to support its contention of nonobviousness bears the burden of proof of establishing a nexus between the claimed invention and evidence of commercial success. The term “nexus” designates a factually and legally sufficient connection between the evidence of commercial success and the claimed invention so that the evidence is of probative value in the determination of nonobviousness. *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 7 USPQ2d 1222 (Fed. Cir. 1988).

22. The examiner's position is that the nexus between the claimed invention and evidence of commercial success is not present. The evidence presented is directed to very specific sets of experiments using defined conditions. The instant claims are not limited to such. Moreover, it appears that there are many unclaimed features that are described in the evidence. For example, the Declaration refers to “particular property being measured for comparison to a threshold performance” and that such is “typically set sufficiently high” (paragraph 5). This Declaration also refers to an “easy to screen probe monomer” being used to predict the properties of a “more difficult” polymerization (paragraph 8). Thus it is not commensurate in scope with the claimed invention.

23. To be pertinent to the issue of nonobviousness, the commercial success of devices falling within the claims of the patent must flow from the functions and advantages disclosed or inherent in the description in the specification. Furthermore, the success of

an embodiment within the claims may not be attributable to improvements or modifications made by others. *In re Vamco Machine & Tool, Inc.*, 752 F.2d 1564, 224 USPQ 617 (Fed. Cir. 1985).

24. Also, the collaborative research effort described in the Declaration is not sufficient to prove commercial success. Evidence of licensing is a secondary consideration which must be carefully appraised as to its evidentiary value because licensing programs may succeed for reasons unrelated to the unobviousness of the product or process, e.g., license is mutually beneficial or less expensive than defending infringement suits. *EWP Corp. v. Reliance Universal, Inc.*, 755 F.2d 898, 225 USPQ 20 (Fed. Cir. 1985).

25. For these reasons and the reasons of record, the rejection of claims 16, 17, 19, 24-26, 28, 30-33, 37, 38, 41-43, 45 and 50 under 35 U.S.C. 103(a) is maintained.

***Claim Rejections - 35 USC § 112***

26. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

27. Claims 16, 17, 19, 24-26, 28, 30-33, 37, 38, 41-43, 45 and 50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 16 and 42 (and all claims dependent thereon), the phrases “using the polymerization performance as a figure of merit for planning...” and “using the determination as a figure of merit for planning...” (respectively) are confusing and render the claims indefinite. If the scope of the invention sought to be patented cannot be determined from the language of the claims with a reasonable degree of certainty, a rejection of the claims under 35 U.S.C. 112, second paragraph is appropriate. *In re Wiggins*, 488 F.2d 538, 179 USPQ 421 (CCPA 1973) {MPEP § 2173.02}. Additionally, the phrases could be interpreted as relative as they do not describe how the information is to be used and the value of the “figure of merit”; such information is also not present in the instant specification (i.e. specification does not provide a standard). See MPEP § 2173.05(b) with respect to relative terminology.

### ***Response to Arguments***

28. Applicant’s arguments and the Declarations under 37 CFR 1.132 filed April 30, 2003 have been fully considered but are not found persuasive. The examiner’s rationale is set forth below.

29. Applicant argues that the phrases cited in the rejection are not confusing or relative (Response, pages 2-3). However, applicants refer to overcoming a “certain threshold”. What is this threshold? How is it to be determined? Applicants also point to the Declarations as support for the phrases. Here applicants and declarants refer to “particular property being measured for threshold performance” and that such is



“typically set sufficiently high”. Again, what is the “particular property” and how high is “sufficiently high”? The terminology is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Therefore, the examiner deems that this does render the claims indefinite and the above rejection under 35 U.S.C. 112, second paragraph is maintained.

***New Rejections***  
***Claim Rejections - 35 USC § 112***

30. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

31. Claims 16, 17, 19, 24-26, 28, 30-33, 37, 38, 41-43, 45 and 50 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This is a written description rejection.

To satisfy the written description requirement, an applicant must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention. Applicant's claims are directed to a method of screening potential catalysts where polymerization performance of one monomer is used “as a predictor for the polymerization performance” of other

monomers and the polymerization performance is used “as a figure of merit for planning”. The prediction and planning steps are mental steps and there are a virtually unlimited number of acts that could read on these steps. The method steps are set forth in generic language and no details on how they are to be carried out are set forth in the instant specification.

The above terminology without any description and/or exemplification of how the steps are to be carried out and *how they are interrelated to achieve the object of the invention*, does constitute a written description problem in the instant case as it is completely unclear that applicant was in possession of the claimed genus of prediction and planning. Applicant’s claimed scope represents only an invitation to experiment regarding possible prediction and planning steps. The language of the specification should describe the claimed invention so that one skilled in the art can recognize what is claimed. The disclosure must allow one skilled in the art to visualize or recognize the identity of the subject matter purportedly described.

Therefore it is deemed that the disclosure is neither representative of the claimed genus, nor does it represent a substantial portion of the claimed genus and that there is not adequate support in the instant specification for the claimed genus or a substantial portion thereof.


***Status of Claims/Conclusion***

32. No claims are allowed.

33. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maurie Garcia Baker, Ph.D. whose telephone number is (703) 308-0065. The examiner is on an increased flextime schedule but can normally be reached on Monday-Thursday and alternate Fridays from 9:30 to 7:00.

34. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew J. Wang, can be reached at (703) 306-3217. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Maurie Garcia Baker, Ph.D.  
July 14, 2003



MAURIE GARCIA BAKER PH.D.  
PRIMARY EXAMINER